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WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

No. ~~333~~ 215

SUPREME LODGE KNIGHTS OF PYTHIAS,
Petitioner,

vs.

LENA EISER
Respondent.

PETITION FOR WRIT OF CERTIORARI AND PETITIONER'S BRIEF.

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SUPREME LODGE KNIGHTS OF PYTHIAS,
Petitioner,

vs.

LENA EISER *Respondent.*

No. ———.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, The Supreme Court of the United States:

The Supreme Lodge Knights of Pythias, in support of this, its petition for a writ of certiorari to be directed to the Supreme Court of the State of Nebraska to review a judgment rendered by said Supreme Court of the State of Nebraska on the 4th day of October, 1922, and from the judgment of said Supreme Court of the State of Nebraska affirming and confirming said judgment, by its order overruling your petitioner's petition for a rehearing which was duly filed within the time provided by the statute of said state and which was duly considered and decided by said court on the 20th day of November, 1922, affirming the judgment and decree of the District Court of Otoe County in the said State of Nebraska, for the respondent herein,

who was the plaintiff, in the sum of $———— respectfully shows:

1. That this action was begun by a complaint on behalf of the respondent against the petitioner upon a certificate of insurance, alleging that the respondent had executed to the assured a certificate of insurance in the sum of $2,000; that the assured maintained his good standing in the order and that the respondent was designated in said certificate as the beneficiary thereof and that the petitioner agreed to pay said sum of $———— upon satisfactory proof of the death of the assured; that the assured had done all things required of him to be performed, and that the defendant refused to pay said insurance or any part thereof. Judgment was demanded for the amount of the certificate together with attorney's fees.

2. That the defendant, your petitioner, duly filed its answer to said complaint alleging that it duly issued the certificate sued upon; that said defendant was duly authorized to transact business in the State of Nebraska. That said defendant was created by a special act of Congress and that its powers were given to it by virtue of said act of Congress; that it had been acting under said powers and by virtue thereof and that said powers can only be determined finally by the courts of the United States.

Said answer further admitted that the assured had died and further alleged that said certificate was not an absolute insurance on the life of the assured but that it was conditional and subject to the regular payment of monthly premiums to become due and to all changes in the laws of said defendant that might thereafter be enacted under and by virtue of said special act of Congress.

Said answer further alleged that neither the assured or any other person paid the assessments and dues required from said assured under the terms of said certificate from January, 1911, until the death of the assured. That by reason of the neglect and refusal of the assured to pay said assessments and dues said certificate became forfeited under the terms of the statutes of said defendant.

Said answer further alleged that under and by virtue of the right and power of said special act of Congress and the acts amendatory thereof the defendant promulgated and made an increase of rates of insurance and the amount required to be paid by the assured and of those of his class, which rates became effective January 1, 1911, and of which said assured was duly notified and informed; that said increase of rates was necessary for the maturing of the certificates held by the assured and all others who held certificates of insurance therein; that the defendant had the authority and power, to enact, adopt and pass the legislation and by-laws increasing said rates. That said rates were obligatory upon the assured therein as well as all others who were members of said Insurance Department; that said increase of rates and the action taken therein by said defendant were in the nature of internal regulations and management of the Insurance Department of said defendant, and were binding and obligatory upon the entire membership of said Insurance Departments regardless of where they lived, or the State in which they resided, and no member or class of members had any greater right or privilege than any other member or class of members, and that notwithstanding the duty and the obligation of the assured to pay the said rates, he purposely failed, neglected and refused to

pay any part of said dues or assessments from January 1, 1911, until his death April 11, 1916.

Said answer further alleged that the right and the power of the defendant to increase said rates were expressly adjudicated and determined and the validity of such rates was settled by a judgment and decree of the United States District Court for the District of Indiana, in a suit therein brought by Joseph Holt who was a member of said Insurance Department and held a certificate similar in all respects to the certificate of the assured which is involved in this action, and others on behalf of themselves and of all other members of said Department similarly situated against the defendant herein in which judgment it was finally decided and determined that the defendant herein had the right, power and authority to make such change and increase in its rates and that said increase was reasonable, proper and necessary, and that said defendant had a representative form of government at the time the said rates of insurance were increased; that the said Holt et al., plaintiffs in said suit were members of said Insurance Department in the same class as the assured herein. That said U. S. District Court had full power and jurisdiction of all matters involved in said suit and of the parties thereto and that its decision therein was final, conclusive, and *res judicata* of all matters involved in said suit, among which was the validity of the rates so fixed and the validity of all the laws enacted in reference to the increase of rates.

It was further alleged that by reason of said judgment and decree of said U. S. District Court for the District of Indiana, the assured herein and his beneficiary herein are barred and estopped from again litigating the question of the validity of said increase of rates or the question of the

representative form of government, or the obligation of the assured to pay said rates which questions are decisive of the questions involved in this case; that said decision remains in full force and effect, and is in no manner changed, modified or reversed, and which decision adjudged and finally determined that this defendant had and maintained a representative form of government at all times and that it had authority, right and power to increase its rates as alleged herein and that said increases were binding and effective on all its members and that a failure, neglect or refusal of any member to pay such increased rate resulted in and caused a forfeiture of his certificate of membership, the same having been finally approved and affirmed by the Supreme Court of the United States.

Said answer further alleged that said defendant claimed the benefits of Article 4, of Section 1, of the Federal Constitution guaranteeing full faith and credit to said judgment of the U. S. District Court for the District of Indiana, and also that it claimed the benefits of Section 905 revised statutes of the United States extending the full faith and credit clause of said Federal Constitution to the Courts of the United States, situated within the districts of the various states and also claims the right to have said judgment duly credited by the Courts of the State of Nebraska that said judgment had within the district of the United States District Court for the District of Indiana.

Said answer further alleged that the authority and power of said defendant to increase its rates and that said legislation was duly and validly enacted by said defendant at the time it so increased its rates was adjudicated and finally decided and determined by the Supreme Court of the United States on June 12, 1916, in a cause therein pending on writ

of error from the Court of Civil Appeals of the State of Texas, wherein the Supreme Lodge Knights of Pythias, being defendant, was plaintiff in error and Mims was defendant in error; that said Mims was a member of said fendant's Insurance Department of the same class as the assured herein; that said action in said Mims case was originally commenced in the District Court of Dallas County, State of Texas, May 19, 1911. That the plaintiff in said cause alleged that said increase of rates, being the same increase involved as in this action was alleged and that the law enacting such increase was wrongfully and illegally passed; that the answer of the defendant therein, being the defendant herein, alleged that said laws were just, reasonable and necessary, and that they were duly passed in accordance with the power and authority given under the Federal Statute creating the defendant and that the plaintiff's failure to comply with said laws caused a forfeiture of his insurance and his rights thereunder.

Said answer further shows that said cause was finally decided by the said Supreme Court of the United States which court had full power and jurisdiction over all matters involved in said suit and of the parties thereto, and that said laws were adjudged valid and binding upon all members of said Insurance Department, and the defendant herein alleged that said decision is decisive of the rights of the plaintiff herein, and that the plaintiff is barred and estopped from litigating said questions or denying the conclusiveness of said decisions in said case.

Said answer further alleged that the application of the assured herein and the certificate sued upon in this case were both conditioned upon the obligation of the assured to abide by and do all things required by the laws then in force

and the laws that might thereafter be enacted governing the Insurance Department. That the claim of the plaintiff herein is governed by and is dependent upon the defendant's charter of incorporation under said Federal Statute and the rules, laws and regulations adopted and promulgated by the defendant under and by virtue of said Federal Statute, and that the plaintiff is now estopped from denying or controverting the right of the defendant to enforce the rates so enacted and promulgated.

3. That the plaintiff in reply to said answer alleged that in this action there is not involved the construction of any Federal Statute, or any question arising under the laws of the United States which only the courts of the United States can determine; that the assured did not fail, neglect and refuse to pay the assessments required under his certificate at any time, and that his certificate did not become forfeited.

Said reply further alleged that said defendant was not empowered or given authority to make an increase of rates of insurance so as to affect the certificate of the assured, and further denied that any change of rates was made affecting or which was binding upon the assured at any other time, and further denied that any attempt to change the rates was ineffective and that the certificate so held by the plaintiff was in full force and effect at the death of the assured, and that no adjudication was ever had in any court binding upon plaintiff or upon the assured in his lifetime.

Said reply further alleged that in the case of *Meyer v. Supreme Lodge*, which case was appealed to the Supreme Court of the State of Nebraska and which involved the right, power and authority of the defendant to make, change or increase the rates of insurance, the validity of the rates

of the defendant and as to whether the defendant had a representative form of government, which case was decided April 30, 1920, the defendant was without any right, power or authority to make any change or increase of its rates and that said rates so made were void and that defendant did not have a representative form of government; that said judgment and opinion of said Supreme Court of the State of Nebraska is unreversed, and in full force and effect, and is *res judicata* of the questions raised in the defendant's answer.

4. That the record, a certified copy of which is presented herewith, shows no conflict of evidence the respondent relying solely upon the ground that the undisputed facts compel the legal conclusion that said increase of rates was invalid and void as to the plaintiff herein.

5. That the record shows that the assured held a certificate of insurance under date of 1885 and that he continued to pay the assessments and dues thereon until January 1, 1911; that he was then notified that an increase of rates had been enacted and that thereafter said increase of rates would be effective; that he refused to pay said increase and continued to tender his former rate to the Section Secretary whose duty it was to receive the assessment from the members of assured's lodge; that he continued to tender said old rate up to the time of his death; that the defendant refused to receive the said amount or any part thereof so tendered, but demanded the increased amount, which the assured refused to pay and denied the authority of the defendant to make an increase of the rates effective as against him.

It was further shown that in March, 1911, Joseph Holt and many others, in their own behalf and on behalf of all

others similarly situated brought a suit in the U. S. District Court for the District of Indiana, alleging that the legislation increasing the rates upon the members of the fourth class of which they were members and also the insured herein was invalid and void and that such legislation was a violation of their rights and prayed that said legislation be declared void and that the officers of the Insurance Department of the defendant be enjoined and restrained from enforcing any part of said legislation; that an answer was filed thereto and also a cross-complaint filed; that the issues so made in said cause involved the validity of all the legislation of the defendant affecting or increasing the rates of insurance upon any and all members of said Fourth Class.

Said record further shows that said cause was referred to a Master in Chancery to hear the evidence and to report the facts together with his conclusions thereon; that said Master did hear all the evidence on behalf of the plaintiffs and of the defendant, and that he made a report to the District Court of his finding of facts and his conclusions thereon; that among said facts so found were that the defendant was created by virtue of a Federal Statute; that its Supreme Lodge and law making body at the time of enacting said rates was the same and created the same as when said Federal Statute was enacted creating said defendant; that it had at that time and at all times theretofore mentioned a representative form of government; that it was properly acting within the powers given to it by virtue of said act of Congress being Act of June 29, 1894, 28 U. S. Statutes at large 96-97.

Said record further shows that said Master expressly found that said increase of rates was obligatory and binding upon all members of said Fourth Class, and that the rates

established in said legislation were reasonable, proper and necessary for the life of said Department, and for the maturing of the certificates outstanding as well as those to be issued. Said Master reported his conclusions thereon in favor of the defendant.

The record further shows that the court after hearing the arguments thereon and after considering the evidence and said findings held that the Master's findings were proper and that his conclusions were correct, and that he thereupon entered a decree and judgment in favor of the defendant and against the plaintiffs.

The record further shows that exceptions were filed to the Master's findings of facts and to his conclusions and that said District Court overruled said exceptions and that the plaintiffs appealed from said judgment and decree to the Circuit Court of Appeals for the Seventh Circuit and that said appeal was heard by said court and that the judgment of the District Court of the United States for the District of Indiana was affirmed on July 18, 1916, 149 C. C. A. 197, 235 Federal 883.

The record further shows that an appeal was taken from said judgment of the Circuit Court of Appeals for the Seventh Circuit, to the Supreme Court of the United States and that said appeal was dismissed October 21, 1918, 248 U. S. 588, 63 L. ed. 434.

The record further shows that the rates in force prior to January 1, 1911, were insufficient for the purpose and could not mature the policies outstanding; that the Insurance Department was in very embarrassing circumstances; that the disbursements were exceeding the income and that within a very few months the small surplus would have been exhausted; that the rates had theretofore been increased sev-

eral times and that many extra monthly assessments had been made; that the membership was becoming restless that the Supreme Lodge had gravely considered the matter of increase for sometime and that they had called an expert actuary who had examined their certificates and had advised them that the only way to prevent the destruction of the Insurance Department was to increase the rates; that they used as the basis of said increase the American Experience Table of Mortality and an interest assumption of 3½%; that the rates established were based upon the attained ages of the members without medical examination; that all were treated exactly alike.

Said record further shows that the application of the assured, as well as the certificate in suit contained a provision that the assured will abide by the laws in force and by all laws subsequently enacted.

6. The court found in favor of the plaintiff for the amount of the certificate sued upon, together with attorney's fees and costs. From this judgment the defendant, your petitioner herein, appealed to the Supreme Court of the State of Nebraska, which affirmed the judgment of the District Court in favor of the respondent.

7. That the questions of law for the determination by the District Court were as follows:

(a) Was the assured, and his beneficiary, required by the laws, to observe and obey the Supreme Statutes of the defendant increasing the rates of insurance on the Fourth Class, of which he was a member?

(b) Did the Supreme Lodge of the defendant have the power, authority, and right under the Federal Statute of

June 29, 1894, 28 Statutes at large, pp. 96-97, to enact and promulgate the Supreme Statutes regulating and increasing the rates of insurance on the members of the Fourth Class?

(c) Was the Class suit by Joseph Holt and others against the defendant in this case, the petitioner herein, binding upon the assured herein?

(d) Did the District Court and later the Supreme Court give full faith and credit to said decision in their decision of the present case, as required by Article 4, Section 1, of the Federal Constitution?

(e) Did the District Court, and later the Supreme Court of the State of Nebraska give to the defendant therein, your petitioner, its right, as guaranteed by Section 905, Revised Statutes of the United States, giving effect to the judgment of the United States Court for the District of Indiana in the State of Nebraska the same as said judgment has in and for the said District of Indiana.

(f) Is the judgment of the United States District Court of Indiana *res judicata* of the question of representative form of government, validity of rates and duty of members of the Fourth Class in respect to the increase of rates.

(g) Does any member of said Fourth Class have the right again to contest the validity of the increase of rates in view of the decision of the United States District Court for the District of Indiana in said class suit of *Holt et al. v. Supreme Lodge Knights of Pythias* and in view of the decision of the United States Circuit Court of Appeals for the Seventh Circuit affirming said judgment, and of the dismissal of the appeal therefrom by the United States Supreme Court.

8. That the facts before stated under paragraph 5 were uncontradicted. The District Court of Nebraska held that the said statutes increasing the rates were void as to the plaintiff, the respondent herein, that the governing body of the defendant was not properly constituted and that no legislation enacted by the said body was valid or binding upon any member of the Insurance Department thereof in said State of Nebraska. That the judgment of the District Court of the United States for the District of Indiana was not *res judicata* as to any questions involved in this suit. The Supreme Court of the State of Nebraska held that the plaintiff was entitled to recover on the ground that the defendant did not have a representative form of government and that all legislation enacted by said body was invalid and void, and therefore, could not be enforced against the plaintiff; that said increased rates being invalid, did not affect the assured's right to the payment of his old rates and, therefore, that his certificate did not become forfeited and was valid and enforceable. That his rights were not affected by the judgment of the United States Court either in the Holt case or in the Mims or Smyth cases, and that those adjudications did not affect the plaintiff's rights.

9. The Supreme Court of the State of Nebraska in affirming and confirming, on rehearing its judgment and decree affirming the judgment of the District Court of Otoe County, erred in striking down the Supreme Statutes of your petitioner, which statutes were enacted pursuant to and in accordance with its powers granted under the Federal Act of June 29, 1894, 28 Statutes at large, pp. 96-97, for the reason that such Supreme Statutes have already been adjudicated and declared valid by your Honorable Court in

the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179. And the case of *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492, and the decision in the case of *Holt v. Supreme Lodge Knights of Pythias*, 149 C. C. A. 197, 235 Fed. 885.

10. That the Supreme Court of the State of Nebraska erred in refusing to extend full faith and credit, as required by Article 4, Section 1, of the Federal Constitution to the judgment and decree of the United States District Court for the District of Indiana in the Class suit of *Joseph Holt et al. v. The Supreme Lodge Knights of Pythias*, wherein suit was brought on behalf of the plaintiffs to have declared null and void the Supreme Statutes of your petitioner increasing the rates, being the same statutes involved in the present action, and wherein said District Court of the United States expressly held valid and obligatory all of said statutes.

11. That the Supreme Court of the State of Nebraska in affirming the judgment of the District Court of said State erred in failing to give effect, and full faith and credit as required by Article 4, Section 1, of the Federal Constitution of the powers, rights, and privileges to your petitioner herein as granted to it under and by virtue of the Federal Statute creating your petitioner, that is, the Act of June 29, 1894, 28 Statutes at large 96-97. The said statute having been judicially construed by the Honorable Supreme Court of the United States in the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179, and *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492.

12. That the Supreme Court of the State of Nebraska erred in refusing to give full faith and credit, as required by Section 905, R. S. U. S., to the judgment of the United States District Court for the District of Indiana, which expressly adjudicated the validity of the Supreme Statutes of your petitioner increasing its rates of insurance being the same statutes involved in the present action.

In the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, which judgment and decree of said District Court was affirmed on appeal to the U. S. Circuit Court of Appeals of the Seventh Circuit (149 C. C. A. 197, 235 Fed. 885).

13. The Supreme Court of the State of Nebraska in affirming the judgment of the District Court of Otoe County, erred in refusing to hold that under its Federal charter, being the Federal Act of June 29, 1894, 28 Statues at large, pp. 96-97, the governing body of said charter had the power, right and authority to enact the legislation involved in said action, increasing the rates of insurance upon its members.

14. That the Supreme Court of the State of Nebraska erred in failing to give full faith and credit to the judgment and decree of the United States District Court for the District of Indiana in the case of *Joseph Holt v. Supreme Lodge Knights of Pythias*, the same being a class suit brought by and on behalf of the plaintiff therein and all other members of the Fourth Class of said Insurance Department, including the assured in this case, wherein it was adjudged that the the Supreme Lodge Knights of Pythias had and maintained a representative form of government at the time of the enactment of the Supreme Statutes involved in this case increasing the rates of insurance.

Your petitioner insists that its defense to said action should have been sustained and that the judgment of the District Court of the United States of the District of Indiana, should have been given the full faith and credit to which it was entitled under Article 4, Section 1, of the Federal Constitution and of Section 905, R. S. U. S. extending full faith and credit to the judicial acts and records of the courts of other states, and that your petitioner's rights under its charter were unlawfully denied to it. Your petitioner presents herewith as a part of this petition its brief showing more fully its views upon the questions involved and also a transcript of the record of the Supreme Court of the State of Nebraska which brief and record are made part of this petition.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the Supreme Court of the State of Nebraska, commanding said Court to certify and to send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Supreme Court in this case which was entitled in that court, Lena Eiser , *Appellee, v. Supreme Lodge Knights of Pythias, Appellant,* to the end that said cause may be reversed by this court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate, and that said judgment of the Supreme Court of the State of Nebraska be reversed by this Honorable Court.

SUPREME LODGE KNIGHTS OF PYTHIAS,

By Harry Wade

President of Insurance Department.

State of Indiana, }
County of Marion, } ss.:

Harry Wade, being duly sworn, says that he is the president of the Insurance Department of the Supreme Lodge of Knights of Pythias, that he has read the aforesaid petition by him subscribed and that the facts therein stated are true to the best of his information and belief.

Harry Wade

Subscribed and sworn to before me this 30 day of January, 1923.

Harry C. Wilson

Notary Public in and for said State of Indiana.

My commission expires Dec. 5, 1926.

W. J. Connell

Robt. H. Evans

Attorneys for Petitioner.